

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF MAY 20, 2025

The Board of Zoning Appeals (BZA) held its regularly scheduled meeting on Tuesday, May 20, 2025, at 5:00 p.m. at the James Island Town Hall, 1122 Dills Bluff Road, James Island, SC.

Comm'rs present: David Savage, Chair, Joshua Hayes, and Massey Yannitelli. Absent: Comm'r Roy Smith (gave notice). A quorum was present to conduct business. Also, Mayor Brook Lyon (for Planning Director, Kristen Crane), Town/BZA Attorney, Brian Quisenberry, and Parker Richardson (for Town Clerk/Secretary to the BZA, Frances Simmons).

Call to Order: Chair Savage called the meeting to order and asked those who wished to participate to join in the prayer. Comm'r Hayes lead the Pledge of Allegiance.

Compliance with the SC Freedom of Information Act: Chair Savage announced that this meeting was being held in compliance with the SC Freedom of Information Act. Fifteen (15) days prior to this hearing, a public notice was posted in the Post and Courier, sign posted on the designated property, and a notice was mailed to the applicant or representative of the property, the property owner, and property owners within 300 feet of the application, and to parties of interest. Persons, organizations and the news media that have requested declaration of our meetings were also notified. The Freedom of Information Act does not require notification to anyone other than the applicant and parties of interest. This hearing was also live-streamed on the Town's website.

Introductions: Chair Savage introduced himself as Chair, members of the BZA, Mayor Brook Lyon, Town/BZA Attorney, Brian Quisenberry, and Parker Richardson

Review Summary (Minutes) of the April 15, 2025 Meeting: Chair Savage called for a motion to approve the April 15, 2025 minutes. Motion made by Comm'r Yannitelli, seconded by Comm'r Hayes. No discussion. Passed unanimously.

Brief the Public on the Procedures of the BZA: Chair Savage explained the purpose of the Board of Zoning Appeals as a quasi-judicial board empowered to approve, approve with conditions, or to deny requests. The BZA is authorized to defer a case should there be a need to obtain additional information.

Administer the Oath to those Presenting Testimony: Town/BZA Attorney, Brian Quisenberry swore in persons wishing to provide testimony.

Executive Session: The BZA may enter into an Executive Session in accordance with 30-4-70(a) Code of Laws of South Carolina. Not needed.

Review of the Following Application:

Case #BZAV-3-25-041: Variance request for the reduction of the 5' required accessory structure setback for the placement of a detached shed in the Low-Density Suburban Residential District (RSL) at 821 Jeb Stuart Road, (TMS# 454-08-00-009): Chair Savage introduced the variance request of Erik Hilger, 821 Jeb Stuart Road, for the reduction of the required 5' setback to 3' for an accessory structure. The variance must meet all of the criteria of the Ordinance. Chair Savage called upon Mayor Lyon to give the Staff's Review and Findings of Facts for Planning Director, Kristen Crane.

Staff Review:

The applicants, Erik and Brittany Hilger, are requesting a variance for the reduction of the 5' required accessory structure side setback for the placement of a detached structure (shed) in the Low-Density Suburban Residential (RSL) Zoning District at 821 Jeb Stuart Rd. (TMS #454-08-00-009). Adjacent properties to the north, east, south, and west are also in the Low-Density Suburban Residential Zoning District and are in the Town of James Island's jurisdiction. Other uses within 300' of the subject property include residential uses in the Town of James Island.

Town of James Island Zoning and Land Development Regulations, §153.207 states accessory structures in residential zoning districts that are over 120 square feet, shall be at least five feet from any interior lot line in a residential district.

The subject property contains one single-family home that was constructed in 1972 per Charleston County records. The submitted survey shows a small shed located in the backyard, as well as a rear patio and deck. The property owners explain in the letter of intent that they "would like to put our building less than 5 feet of the property line to allow a live oak some space to grow. Also I would like to be under 3 feet of line in one corner because our lot is narrowing in the back and it will crowd the yard and tree if moved out."

Findings of Fact:

According to §153.049 F, Zoning Variance Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR), The Board of Zoning Appeals has the authority to hear and decide appeals for a Zoning Variance when strict application of the provisions of this Ordinance would result in unnecessary hardship. A Zoning Variance may be granted in an individual case of unnecessary hardship if the Board of Appeals makes and explains in writing the following findings:

F (a): *There are extraordinary and exceptional conditions pertaining to the particular piece of property;*

Response: **The live oak tree situated in the middle of the rear yard may be an exceptional condition that pertains to this piece of property.**

F (b): *These conditions do not generally apply to other property in the vicinity;*

Response: **There may be other properties in the vicinity that have grand trees in a similar location, but it is not known if any of these properties have trees in a location that would prevent any proposed construction in their desired locations. Therefore, the condition of the grand tree's location may not generally apply to other properties in the vicinity.**

F (c): *Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;*

Response: **The application of this Ordinance, §153.207, to the subject property would prohibit constructing the shed in the location that is proposed.**

F (d): *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance;*

Response **The authorization of a variance should not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district should not be harmed. Additionally, an opaque, wooden privacy fence acts as a buffer between the proposed structure and the adjacent neighbor.**

F (e): *The Board of Zoning Appeals shall not grant a variance to the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a non-conforming use of land or to change the zoning district boundaries shown on the Official Zoning Map;*

Response: **The variance does not allow a use that is not permitted in this zoning district, nor does it extend physically a nonconforming use of land or change the zoning district boundaries.**

F (f): *The need for the variance is not the result of the applicant's own actions; and*

Response: **The need for the variance may not be the result of the applicant's own actions due to the pre-existing location of the grand tree, prior to the purchase of the property.**

F (g): *Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.*

Response: **The granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.**

In granting a Variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building or structure as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare (§153.045 E 2).

Action:

The Board of Zoning Appeals may approve, approve with conditions or deny Case # BZAV-3-25-041 (for the reduction of the 5' required accessory structure setback for the placement of a detached accessory structure (shed) in the Low-Density Suburban Residential (RSL) Zoning District at 821 Jeb Stuart Rd.) based on the "Findings of Fact" listed above, unless additional information is deemed necessary to make an informed decision.

Questions to Staff:

Comm'r Hayes asked if there is an approximate height of the tree where the branch comes up that would potentially interfere with the building. Mayor Lyon said there does not appear to be any low lying branches but assumes it has to do with the root of the tree to allow it to grow larger. She suggested deferring the response to the applicant.

Chair Savage announced that the Board must determine that the request meet all criteria of the Ordinance and commented needing further clarification on criteria F(c) and F(f).

Applicant Presentation:

Eric Hilger
821 Jeb Stuart Rd.
Charleston, SC 29412

Mr. Hilger addressed the Board by explaining to them how his lot sits. He said the tree is the reason he is requesting a setback reduction to have more space to allow the tree to mature over time. He answered Comm'r Hayes' question about low hanging branches, that there may be overgrowth that interferes. He said it is 44' to the tree and by adding everything, it is a 5' setback to the tree trunk. Mr. Hilger said he would like to allow the tree any space that he could. He explained that in the back right corner, (where the yard narrows), he is trying to keep that under so that with the overhead awning it would allow more space. Mr. Hilger spoke about the current layout of the surrounding properties is why he would like to keep it in the same place where the shed is now but it would be a different size. He has spoken with neighbors and Ms. Williams, (who lives in the back) and they are ok with his request.

Questions from the Board:

Comm'r Yannitelli asked how high the shed would be. Mr. Hilger said 13' in the peak and 7' on the awning side. Comm'r Yannitelli asked if the shed would be used for standard purposes. Mr. Hilger said yes, for storage and maybe a hobby shop. They have plans in the future and need more space in their home. He said the garage is finished.

Chair Savage asked if the awning side would be closest to the oak tree. Mr. Hilger confirmed. Chair Savage asked if the awning would be supported by two posts into the ground at each corner. Mr. Hilger confirmed. Chair Savage asked if the only interference with the root system would be where each of those posts would be. Mr. Hilger said he is sure there will be some type of concrete involved. The length may be four and posts, and an anchoring system and maybe a footer.

Chair Savage asked Mr. Hilger when did he and his wife acquire the property and he answered in 2017. Chair Savage asked if the small shed was there at that time. Mr. Hilger said yes, but it is in bad shape and needs to be taken down. Chair Savage said as he understands, the dimensions of the front of the shed is 33'; 23' wide; and a 10' awning, substantially larger than the shed there. Mr. Hilger confirmed. Chair Savage also mentioned that it is 30' deep and Mr. Hilger confirmed. Chair Savage asked Mr. Hilger if he is requesting the variance because of the size of the shed and he confirmed.

Chair Savage recalled a statement made by Mr. Hilger earlier about wanting more space for the tree to grow if the awning could be 10' away from the tree. Mr. Hilger said it would be closer about 5-6'. Chair Savage asked if the shed was made of steel and if there are plans to use it as a fabrication shop. Mr. Hilger said no. Another question by Chair Savage was the 10' awning. He is used to seeing awnings the width of the car under it; typically no more than 6 ½ feet long. He asked what is the purpose of needing a 10' awning on the shed. Mr. Hilger said for storage of lawnmowers and equipment. Chair Savage asked if he could have purchased a smaller shed. Mr. Hilger said he cannot at this point and he was unaware of the setback requirements. Chair Savage asked if a smaller shed could be built and Mr. Hilger said the company is waiting for clearance from him and he has already bought the shed. In response to an earlier statement about the back of the property narrows, Mr. Hilger showed this to the Board from the slide presentation. It was confirmed that the property was purchased as a single family residence. Chair Savage asked whether or not the shed is built, that the property could still be used and Mr. Hilger said yes.

Comm'r Hayes asked if the shed was pre-fabricated and Mr. Hilger said yes. Comm'r Hayes asked if there is a way the shed could be shifted down to the right to meet the 5' and 5'. Mr. Hilger said it could but he was trying to get it closer for more space. Comm'r Hayes stated that he did not see an issue where a limb had to be cut. He understands that the drawing may not be 100 % accurate as for as distance, but it looks that there is some space where it could potentially be moved closer, especially if the awning at its peak is only 7'. Further he said in the previous photos, the lowest limbs would be well above that with the 13' peak on the largest portion of the shed. In response to Comm'r Hayes' question about the posts for the awning

and the anchoring, Mr. Hilger said the shed would be on slab and the awning would be the footer and the footers would have to be done all around.

Comm'r Yannitelli commented on his understanding of the request stating that if the shed were moved diagonal towards the tree to get it to 2' further from the back 2' from the left, the applicant would be in compliance. He said the Board is not saying that he cannot have this size shed a little closer to the tree; the property owner would like to tuck it in the back corner; which is what we all want to do with our sheds. He asked if his understanding of this is correct. Chair Savage gave his understanding that of the shed moved 2' additional feet from the back of the fence and 2' additional feet from the left side. Comm'r Yannitelli asked what is the size of the live oak and Chair Savage said it is described as a grand tree.

Comm'r Yannitelli commented that he likes the idea of giving the tree as much space as possible personally but think it is going to be hard to meet all of the criteria, however, that was not posed as a question.

Chair Savage gave Mr. Hilger the opportunity to address the Board. Mr. Hilger said he would like to follow his plan. He said the Board may have questions about the criteria but felt what he presented is there and is happy with the decision of the Board either way.

In Support: None.

In Opposition: None.

Rebuttal: Not needed.

*One email was received in support of the request from Travis Fitts, 825 Jef Stuart Rd.

Chair Savage asked for motion to close the hearing and a second for discussion. Comm'r Yannitelli moved to close the hearing, seconded by Comm'r Hayes. No discussion. Motion passed unanimously. Chair Savage asked for a motion to approve the variance request for: Case #BZAV-3-25-041: Variance request for the reduction of the 5' required accessory structure setback for the placement of a detached shed in the Low-Density Suburban Residential District (RSL) at 821 Jeb Stuart Road, (TMS# 454-08-00-009. Motion made by Comm'r Yannitelli, seconded by Comm'r Hayes.

Comm'r Hayes voiced concern about criteria F(f). He understands if this were his property he would want the same, but the Board has to be held to all criteria and looking at the data presented via the schematics in the drawings, the photos of the tree, and the additional 2' to be brought down in the right is more of a want or desire, not necessarily something that is concrete that has to be done. This is where he is held up.

Chair Savage said because of these hearings being videotaped he feels it is important for those who might be watching to understand the Board's analysis. He said typically when you have a request for a variance we often see an existing shed on the property that overtime deteriorates and when the time comes that an applicant wants to repair what has already been there you find out there has been some new setback requirements. He said under those circumstances you can easily pass muster on criteria F(f) but in this case, it is a request for a preference. He understands preferences are noble but the Board is bound by all of the criteria presented and cited F(f). While he is sympathetic to the fact that "*I already bought a kit*" but it is up to you to the person buy the right kit. He said the request does not pass meeting Criteria F(c) and F(f) and asked the other Board members for their response regarding the criteria presented. Comm'r Hayes spoke in agreement that all the criteria must be met as did Comm'r Yannitelli. He said the kit has already been purchased, and a solution would be to shift a couple feet closer to the tree then the homeowner would be in compliance and hasn't lost any money by having to purchase a kit for something a little too large for where he wants to put it.

Chair Savage restated the motion that a vote of “yes” approves the variance request and a “no” vote denies it.

Vote:

Comm’r Hayes	Nay
Comm’r Yannitelli	Nay
Chair Savage	Nay

Denied

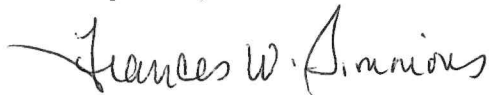
Chair Savage announced for the record that the basis of the denial is that the applicant failed to satisfy conditions F(c) and F(f). The vote to deny the request was unanimous. The final decision of the Board will be mailed to the applicant within ten (10) working days and the applicant may contact the Planning and Zoning staff with questions about the denial of the application..

Vote for Chair and Vice-Chair: Chair Savage announced with the absence of Comm’r Smith and a replacement for Ms. Fabri, the election would not take place tonight. He asked for a motion to carry this item over to the next meeting. The motion was made by Comm’r Hayes, seconded by Comm’r Yannitelli and passed unanimously.

Additional Business: The next meeting of the Board of Zoning Appeals is scheduled to be held on June 17, 2025 at 5:00 p.m.

Adjourn: There being no further business to come before the body, the meeting was adjourned.

Respectfully submitted:



Frances Simmons
Town Clerk and Secretary to the BZA